



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-40
Regulation title	Safety and Health Regulations for Mineral Mining
Action title	Amendment to repeal unnecessary and duplicative regulations
Date this document prepared	December 19, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

As part of Governor McDonnell's Regulatory Reform Initiative, this regulatory action repeals sections of Safety and Health Regulations which are unnecessary or duplicative. No substantive changes are made to the regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On December 19, 2012, the Department of Mines, Minerals and Energy (DMME) adopted amendments to Safety and Health Regulations for Mineral Mining.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

DMME is authorized to promulgate regulations necessary to the performance of its duties under § [45.1-161.292:19](#). Also, § [45.1-161.294](#) requires the Director of DMME to promulgate regulations necessary to ensure the health and safety of mineral miners in underground mineral mines. § [45.1-161.305](#) contains a similar requirement for mineral mines working on surface mineral mines.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to reduce repeal unnecessary or duplicative regulations. There are no substantive changes to the regulation.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This rulemaking is expected to be noncontroversial as unnecessary or duplicative regulations are being repealed.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

Eleven sections of 4VAC25-40 are being repealed because they are duplicative or unnecessary. No substantive changes are being made.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage is simplifying the administrative code by eliminating unnecessary or duplicative regulations. There are no disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no particularly affected localities.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum:

- 1) the establishment of less stringent compliance or reporting requirements;*
- 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements;*
- 3) the consolidation or simplification of compliance or reporting requirements;*
- 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and*
- 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

This regulation was reviewed in its entirety as part of Governor McDonnell’s Regulatory Reform Initiative. The proposed sections were identified as candidates for repeal as they are unnecessary or duplicative.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$0. This action will not result in any additional cost to implement.
Projected cost of the new regulations or changes to existing regulations on localities.	\$0. This action does not affect localities.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	This action affects mineral mine operators.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	This action will not increase costs on operators. No substantive changes are being proposed.
Beneficial impact the regulation is designed to produce.	This action is designed to eliminate duplicative or unnecessary regulations.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The sole alternative to this regulation is to leave the duplicative or unnecessary burdensome current language in place. This would contravene the purpose of Governor McDonnell’s Regulatory Reform Initiative.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action would have no impact on the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
4 VAC 25-40-900 – Total weight of explosives.	“The total pounds of explosives and blasting agents in any blast shall not exceed 40,000 pounds without the approval of the director”	Delete regulation. This regulation is arbitrary since all blasts are monitored by seismograph and must meet established ground vibration and air-blast limits. Current blasting technology does not warrant this restriction.
4 VAC 25-40-950 – Inspection of equipment prior to use.	“Drillers shall inspect their equipment prior to use. Equipment defects affecting safety shall be reported to the certified foreman.”	Delete regulation. This regulation is redundant with 4 VAC 25-40-145 – Inspection of mobile and station equipment which also includes that “defects that affect the safety or health of person shall be corrected before the equipment is used.”

4 VAC 25-40-970 – Safe operation of drills	“Drillers shall inspect their work area for hazards prior to drilling; drills shall be operated from a safe position. Any hazards found shall be eliminated before beginning drilling operations.”	Delete regulation. This regulation is covered under 4 VAC 25-40-460, Examination for unsafe conditions and 4 VAC 25-40-1080, Walls or benches.
4 VAC 25-40-1040 - Clothing	“Drillers and helpers shall not wear loose-fitting clothes which may become caught in moving parts of the drill.”	Delete regulation. This regulation is redundant with 4 VAC 25-40-1760 – Loose fitting clothing.
4 VAC 25-40-1180 – Safety devices	“Safety devices on compressed-air systems shall be checked daily by the operator or his agent.”	Delete regulation. This regulation is covered by 4 VAC 25-40-360, Maintaining machinery.
4 VAC 25-40-1980, Correction of safety hazards	“All safety hazards shall be corrected before work is performed in any area.”	Delete regulation. This regulation is covered under 4 VAC 25-40-460, Examination for unsafe conditions.
4 VAC 25-40-2420, Safety in electrical storms	“Persons shall not stand on the ground in the vicinity of an electrically powered shovel or other similar heavy equipment during an electrical storm.”	Delete regulation. It is obsolete, hazards from electrical storms are universal.
4 VAC 25-40-2430, Carrying tools and supplies	“Tools and supplies shall be carried in the hands and not on the shoulders when persons travel near bare power conductors.”	Delete regulation. This regulation conflicts with 4 VAC 25-40-50, Bare power line precautions, which requires that “where metallic tools or equipment can come in contact with bare power lines, the lines shall be guarded or de-energized”.
4 VAC 25-40-3800, Fixed ladders	“Fixed ladders shall meet the requirements of 4 VAC 25-40-1990 and 4 VAC 25-40-2000”	Delete regulation, it only references two other regulations that are applicable to underground mines.
4 VAC 25-40-4050, Record of persons in mine	“An accurate record of the persons going in and out of the mine shall be kept on the surface.”	Delete regulation. This regulation is covered by 4 VAC 25-40-3880, Check-in and check-out system.
4 VAC 25-40-4030, Employees working alone	“No employee shall be assigned, allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless the person can be heard or seen.”	Delete regulation. This is redundant with 4 VAC 25-40-150, Assignment of persons to hazardous areas.